IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR

THURSDAY, THE 22ND FEBRUARY 2007 / 3RD PHALGUNA 1928

WP(C).No. 30536 of 2005(I)

PETITIONER:

V.REV.GEORGE PAUL COR-EPISCOPA,
AGED 69 YEARS, S/O. PAILY, OLIPURACKAL HOUSE,
KOTHAMANGALAM.

BY ADV. SRI.PEEYUS A.KOTTAM.

RESPONDENTS:
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1. **THE COMMISSIONER OF COMMERCIAL TAXES,**
   THIRUVANANTHAPURAM.

2. **DEPUTY COMMISSIONER,**
   COMMERCIAL TAXES, ERNAKULAM.

3. **SAI SERVICE STATION LTD.,**
   50/115 L, CHERANELLUR ROAD,
   EDAPPALLY, KOCHI - 682 024.

BY GOVERNMENT PLEADER SRI. MOHAMMED RAFIQ.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 22/02/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C). NO.30536/2005:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P.1: COPY OF THE LAWYER NOTICE WHICH WAS ISSUED THROUGH PETITIONER'S LAWYER DTD. 06/11/2004.

EXT.P.2: COPY OF THE ACKNOWLEDGMENT CARD SHOWING THE RECEIPT OF THE EXT.P.1. LAWYER NOTICE.

EXT.P.3: COPY OF THE INVOICE NO. 2705 KO3-00423 ISSUED BY THE R.3.

EXT.P.4: COPY OF THE LETTER DTD. 26/06/2003 ISSUED BY THE R.1. ADDRESSED TO M/S. JOHNEY & COMPANY.

EXT.P.5: COPY OF THE K.G.S.T. RULE 1963 FORM NO. 9 SUBMITTED BY R.3. BEFORE THE R.2.

//TRUE COPY//

prv.

K.BALAKRISHNAN NAIR, J.

W.P.(C) NO. 30536 OF 2005-I

JUDGMENT

The petitioner purchased a Maruthi Baleno car from the 3rd respondent on 29.5.2003. An amount of Rs.9,971/- was collected from him by the dealer as additional sales tax. But, the provision providing for additional sales tax, that is, Section 5D of the KGST Act was enforced only with effect from 1.7.2003. Since the said proposal was part of the budget proposals, the dealers thought that the said provision will come into effect from 1.4.2003 and started collecting tax from the said date. But, actually, as stated earlier, the said provision was enforced only with effect from 1.7.2003. In view of the above provision, tax has been collected from him without the authority of law and therefore, he is entitled to get refund of the same, it is submitted. Seeking the said relief, this Writ Petition was filed.

2. The learned Government Pleader made available to me the provisions of the Kerala General Sales Tax (Third Amendment) Act, 2003, which validates the collection made between 1.4.2003 and 1.7.2003. The relevant provision of the said Amendment Act is Section 3, which reads as follows:

> "3. Validation: - Notwithstanding anything contained in the Kerala General Sales Tax Act, 1963, if any registered dealer has collected any sum purporting to be additional sales tax under Section 5D during the period from the 1st day of April. 2003 to the date of coming into force of the Kerala General Sales Tax (Third Amendment) Act, 2003, the amount so collected shall be deemed to have been validly collected under provisions of the Kerala General Sales Tax Act, 1963, as amended by this Act and accordingly the dealer shall be liable to remit the amount to the Government on or before the 31st day of July, 2003, by declaring it in the monthly return in which case the penal provisions of the said Act shall not apply." (Emphasis supplied)

Going by the above provision, the collection of additional tax from the petitioner is deemed to have been validly made under the provisions of the KGST Act. In view of the above validation provision contained in the above amendment, the prayer of the petitioner cannot be granted. Accordingly, the Writ Petition fails and it is dismissed.

22nd February, 2007. K.BALAKRISHNAN NAIR, JUDGE.

Nm/